IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Second Appeal No. 1472 of 2001
(Old No. 213/1995)(Defective)

Union of India & others …….. Appellants

Versus

Jitendra Kumar ……. Respondent

Mr. P.S. Adhikari, Sr. Central Govt. Standing Counsel for the appellants.
Mr. Sharad Sharma, Counsel for the respondent.

Hon. P.C. Verma, A.C.J.

The present second appeal has been preferred against the judgment and decree dated 27.07.1995 passed by the District Judge, Almora in civil appeal No. 09 of 1992 arising out of judgment and decree dated 09.06.1992 passed by the Civil Judge, Almora in civil suit No. 48 of 1990.

Brief facts of the case are that certain properties belonging to Ministry of Defence, Central Government situated at Dharchula, District Pithoragarh outlived their utility and it was decided to demolish the same. Garrison Engineer, 871, E.W.U.S., Engineer Works Section, Kausani, District Almora (appellant No. 2) on behalf of Government of India auctioned this property on 19.03.1990 by public auction with a condition that the auction purchaser would demolish it within the time given, remove and take away the debris and after clearing the land underneath handover the same to the appellants and the auction purchaser would be owner of debris. The bid of the sole respondent, being highest, was accepted and the auction money was deposited then and there. The appellant No. 2 issued release order on 21.03.1990 in favour of the respondent and Assistant Garrison Engineer, D.E.T., Dharchula, appellant No. 3, also issued a letter for demolishing the said buildings in

accordance with the orders of appellant No. 2. Thereafter the respondent started the aforesaid demolition work. But the Station Commander, Dharchula, appellant No. 4, restrained the respondent by force despite the release order shown to him. The respondent made a request to the appellant Nos. 2, 3 and 4 to help him in restoring the demolition work but the appellants did not pay any heed to the request of the respondent.

The respondent gave notice to appellant Nos. 2, 3 and 4 under Section 80 C.P.C. In response, the appellant No. 2 sent a letter to the respondent canceling the release order dated 21.03.1990 issued by him earlier and also informed him that the property would be got demolished by military force.

Being aggrieved the respondent filed a suit bearing No. 48 of 1990 praying that the appellants be directed that they shall not restrain or create any hindrance to the petitioner from demolishing the properties as contained in Annexure-A, to this suit and in removing and carrying away the debris thereof within the time frame stipulated by the Court and the appellants be further restrained that they themselves or their subordinates shall not undertake the work of demolition and removing of the debris either by itself of through any other agency.

The following issues were framed after examining the pleas of the parties by the trial Court:-

1. Whether the auction dated 13.03.90 in favour of plaintiff holds good and is liable to be enforced as alleged in plaint?

2. Whether the disputed auction dated 19.03.1990 is liable to be ignored on the grounds alleged in para 18 to 27 of the written statement? If so, its effect?

3. Whether the suit is bad for non-joinder of necessary party as alleged in para 28 of the written statement?

4. Whether the court has no jurisdiction to try this suit?

5. To What relief, if any, is the plaintiff entitled?

6. Whether the suit is premature and liable to be dismissed?

The learned trial Court hold issues Nos. 3 and 4 as preliminary issued and decided the same in favour of the plaintiff holding that M/s Dherumal Kapur and Sons is not a necessary party and the Court is competent to try the Suit. After recording the evidence of the parties and hearing them, the trial Court decreed the plaintiff's suit vide its judgment dated 09.06.1992.

Against this order and judgment of the trial Court the appellants approached the Appellate Court. The Appellate Court after considering the relevant evidence on record came to a conclusion that the crux of the matter is whether the auction dated 19.03.1990 holds good and whether the same is binding on the parties?

The Appellate Court while deciding this issue hold that the impugned auction holds good and is binding on the parties and it was conducted with due notice as the notices to this effect was duly published in two newspapers and reached to the persons interested in the auction. The Auction was conducted by Garrison Engineer, who was the person authorized. In response to the notices published in newspapers several bidders took part in it after depositing the requisite money. The respondent- plaintiff is one of the bidders amongst several others. The impugned auction was conducted by M/s Dherumal Kapur & Sons which was Government auctioneer and as such are duly authorized to conduct the auction in their supervision. The respondent offered highest bid and deposited the requisite auction money then and there which was accepted by the appellant-defendant. The release order dated 21.03.1990 was issued in his favour and further the letter for demolishing the

said buildings was also issued in his favour. Thus, it clearly comes out that requisite conditions for auction have been satisfied in this case, therefore, it is enforceable binding on the parties.

In view of the aforesaid facts and circumstances of the case, the Appellate Court too confirmed the first appeal in favour of the respondent vide judgment and decree dated 27.07.1995.

Aggrieved with this judgment and order, the appellants preferred this second appeal.

Learned senior Central Government Standing Counsel has submitted that the alleged auction conducted by M/s Dherumal Kapur and sons was wholly illegal because the said Company was only empowered for demolition of stores and for auctioning the debris thereof and not the demolition of buildings. He further submitted that according to terms and condition of sale, the respondent had to deposit 10% security immediately after the auction was over or within six working days to the Military Engineering Service, but the same was not deposited within time, violating the terms of contract. The date of auction had also not been published in at least two leading national newspapers and two local newspapers and the publication was made only in two local newspapers.

Learned senior Central Government Standing Counsel has further submitted that the tax under provincial / local law by the plaintiff was not deposited at Dharchula and the receipt was not shown to the department before he was entitled to remove the goods as mentioned in para 2(e) of the conditions of sale, therefore, he has no right to file the suit. He further submitted that the earnest money was not deposited before the commencement of auction. The bidders brought bankers'

cheque dated 19.03.1990 for earnest money of Rs. 2,000/- each from State Bank of India, branch at Someshwar whereas the auction was conducted at Kausani on 19.03.1990 at 9 A.M. whereas the bank opens at 10 A.M. Therefore, it is clearly evident that the earnest money was not deposited before commencement of auction. As such the submission of earnest money is not valid and the alleged auction was illegal, invalid and rightly cancelled. The auction was conducted at Kaushani whereas the buildings to be demolished are situated at Dharchula, District Pithoragarh. As per Military Engineering Service (M.E.S.) Regulations, the representatives of Station Headquarters Dharchula should have been present at Kausani at the time to bidding but he was not present there at that relevant point of time. He further submitted that the book value of the property to be demolished is more than rupees eight lacs and the Chief Engineer, M.E.S. was the only competent authority and not the Garrison Engineer as per the provisions of M.E.S. Regulations and no these ground also, the auction is illegal, invalid and rightly cancelled. According to him, plaintiff and Dherumal Kapur and sons collusively conducted the auction for the purpose of taking out the iron scraps from the buildings which were to be demolished.

Interalia, learned counsel for the respondent has submitted that the auction in question was confirmed by appellant No. 2, who is a person authorized. The notice of the auction sale was given through publication in the newspapers. The Auction was conducted by authorized person, i.e. M/s Dherumal Kapur and sons in the supervision of an authorized authority of the appellants i.e. appellant No. 2. The highest bid, which was of the respondent, was accepted and the requisite auction money was deposited by the respondent and was accepted by the appellant No. 2. He further submitted that

auction sale was confirmed and possession of the auction property was delivered to the respondent, Jitendra Kumar by the authorized authority of the appellant and this possession was accepted by the respondent. Therefore, it is clearly evident from the above that requisite conditions for auction have been satisfied in this case, hence, it is enforceable and binding on the parties. Appellant No. 2 cannot be allowed to resile from it, especially when no ground for the same has been made out in this case.

The Trial Court as well as the Appellant Court both has recorded a finding on fact that the auction was conducted in accordance with the terms and conditions of the notice of the auction and was duly confirmed by the appellant No. 2, who is authorized authority and the highest bid of the respondent was accepted and auction money was deposited which was accepted by the appellant No. 2. Thus, in my opinion, no substantial question of law arises in this case, which was to be decided in the present second appeal. The second appeal is devoid of merit and is hereby dismissed.

(P.C. Verma, A.C.J.)

Dt. 11.06.2004
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